

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3440 of 1979

Date of decision: 13-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHIJIBHAI GABABHAI

Versus

HEIRS OF LETHALAL DAMODARDAS  
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Appearance:

MR JITENDRA M PATEL for Petitioner  
MR MC SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

This is a tenant's special civil application in the matter of the Bombay Tenancy and Agricultural Lands

Act, 1948 (hereinafter referred to as "the Act"). The tenant-petitioner, since deceased, filed application under section 70(b) read with section 32(1)(B) and 32G of the Act. The dispute pertains to the land comprising of survey Nos. 2642, 2643 and 2644 situate in the sim of village Savli, taluka Savli. That application was allowed by the Mamlatdar & Agricultural Lands Tribunal, Savli and declared the petitioner as tenant and fixed the purchase price. The respondent has taken the matter in appeal before the Deputy Collector. The Deputy Collector allowed the appeal and set aside the order of the lower authority. The petitioner filed revision application before the Gujarat Revenue Tribunal. The revision application was dismissed by the Tribunal on 12-9-1979. Hence this special civil application.

2. The Mamlatdar & ALT had allowed the application of the petitioner under section 70(b) read with section 32(1)(b) and 32G of the Act. The Deputy Collector had dismissed the appeal on the ground that the application was barred by limitation which finding has been accepted by the Tribunal.

3. The counsel for the petitioner relied on the decision of this Court in the case of D. S. Patel vs. B.P. Patel, reported in 1994(2) GLR 1647 and contended that there is no limitation prescribed for application under section 70(b) of the Act. The counsel for the respondent does not dispute this position. However, he contended that the application under section 70(b) filed by the petitioner is barred by the principles of resjudicata. In support of this contention learned counsel for the respondent stated that earlier in the year 1957 the petitioner had filed application under section 70(b) which was dismissed and as such this application is barred by the principles of resjudicata. I do not find any material on record to reach the conclusion that the earlier application filed by the petitioner in the year 1957 was an application under section 70(b) of the Act. The burden is on the respondent to establish that this application is barred by the principles of resjudicata which burden has not been discharged in the present case. The plea of resjudicata can be established firstly by pleading the fact, then pressing the point for determination and then establishing that the point in issue was directly and substantially in earlier proceedings and lastly decision was given on merits. In the present case the counsel for the respondent is unable to show that the earlier proceedings were under section 70(b) of the Act and that has been decided on merits.

4. In the result this special civil application succeeds in part. The order of the Deputy Collector (Appeals), Baroda, passed in Tenancy Appeal No.150 of 1977, dated 30-11-1978, and the order of the Gujarat Revenue Tribunal, Ahmedabad, dated 12-9-1979 in Revision Application No.TEN.BA.539 of 1979 are quashed and set aside, and the matter is remanded back to the Deputy Collector (Tenancy Appeal) for deciding the matter afresh after giving full opportunity of leading evidence, if any, to both the parties and after hearing them. It is made clear that it shall be open to the respondent to raise the plea of resjudicata in the matter and to press the same in accordance with law. Rule made absolute in the aforesaid terms. No order as to costs.

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